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DEPARTMENT OF EDUCATION

34 CFR Chapter VI

Docket ID ED-2014-OPE-0035

Final Priority; Foreign Language and Area Studies

Fellowships Program

[CFDA Number: 84.015B.]

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Final priority.

SUMMARY: The Acting Assistant Secretary for Postsecondary Education announces a priority under the Foreign Language and Area Studies Fellowships (FLAS) Program administered by the International and Foreign Language Education (IFLE) Office. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2014 and later years.

We take this action to lower postsecondary education costs for students in the United States who have financial need and who seek to become language and area studies experts. We intend the priority to give FLAS institutions an incentive to award fellowships to students who would most benefit from financial relief.

EFFECTIVE DATE: This priority is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kate Maloney, U.S. Department of Education, 1990 K St, NW., room 6082, Washington, DC 20006. Telephone: (202) 502-7521 or by email: kate.maloney@ed.gov.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Purpose of Program: The purpose of the FLAS Program is to provide allocations of academic year and summer fellowships to institutions of higher education or consortia of institutions of higher education to assist meritorious undergraduate and graduate students undergoing training in modern foreign languages and related area or international studies.

Program Authority: 20 U.S.C. 1122.

Applicable Program Regulations: 34 CFR parts 655 and 657.

We published a notice of proposed priority for this program in the Federal Register on March 18, 2014 (79 FR 15081). That notice contained background information and our reasons for proposing the particular priority.

There are differences between the proposed priority and this final priority as discussed in the Analysis of Comments and Changes section elsewhere in this notice.

Public Comment: In response to our invitation in the notice of proposed priority, 11 parties submitted comments on the proposed priority.

We group major issues according to subject. Generally, we do not address technical and other minor changes.

Analysis of Comments and Changes: An analysis of the comments and any changes in the priority since publication of the notice of proposed priority follows.

General Support

Comments: Three commenters expressed support for the priority. Two commenters remarked that the priority was appropriate and feasible to implement.

Discussion: We appreciate the commenters' support.

Changes: None.

Legislative Authority

Comments: Three commenters expressed concern that the priority went beyond the statutory authority that establishes that fellowship awards be merit based. Specifically, one commenter suggested that section 608 of the Higher Education Act of 1965, as amended (HEA), limits the Department to the criterion of "excellence" for FLAS awards. Another commenter stated that "high academic

achievement" as described in 34 CFR 657.3(c) is the only legally authorized criterion for selection of fellows.

Discussion: The Department believes that it has legal authority to establish this priority. Neither the selection criteria in section 608(a) of the HEA nor the eligibility criteria in §657.3, including the criteria regarding the type of program the applicant is enrolled in and whether the applicant shows potential for high academic achievement, is changed by this priority. In other words, a student must meet the criteria in section 608(a) of the HEA and in §657.3 before the student could receive preference from an institution, based on financial need, under this priority. We also note that fellowship applicants who do not receive the preference described in the priority may still be awarded fellowships.

Changes: None.

Administrative Burden

Comments: Four commenters remarked on the increased burden of administering the priority. One commenter noted that FLAS coordinators would have to field more financial aid inquiries from students. Two commenters claimed that it may be difficult or impossible to share financial aid information across institutions for FLAS fellows who apply from other institutions.

One commenter suggested that an institution's FLAS award selection processes would have to be significantly changed to meet the priority. Another commenter remarked that the institution's admissions policies would have to be revised because its graduate programs do not require a demonstration of financial need to be eligible for scholarships or funding.

Three commenters suggested that the inclusion of financial need criteria in the selection of students for FLAS fellowships would create student privacy concerns that would burden administrative staff. The commenters remarked that the inclusion of student financial data would require changes in the award process and additional staff training to securely process the sensitive information.

Two commenters noted the increased burden for students to have to fill out the Free Application for Federal Student Aid (FAFSA) in order to be competitive for a FLAS award. One commenter cited that a minority of graduate students fills out a FAFSA form, and, accordingly, graduate students would have to complete a FAFSA solely to qualify for a preference under the priority.

Discussion: We agree that administering this priority will require the academic department that awards fellowships to field more financial aid inquiries from students and

coordinate with the institution's financial aid office. We believe this additional work will not present an unreasonable burden on the institution. Additional student inquiries and increased coordination with other offices on campus do not outweigh the importance of directing fellowship aid where it is most needed. We also do not believe it is difficult or impossible for an institution to obtain financial aid information related to a summer applicant who attends another institution. A student may request that the Department send an Institutional Student Information Record (ISIR) to an additional school through FAFSA on the Web, and the new institution will receive the information the next business day.

We also do not believe that the burden to protect the privacy of student information will be significant given that an institution should already have in place requirements for the protection of student information. In addition, the financial aid office could limit the information that it transmits to the academic department to cover only the student's expected family contribution (EFC), rather than providing all of the student's ISIR information to the academic department. In addition, an institution may meet the priority by committing to use a preference for students with financial need beginning in

the 2015-2016 academic year, which will provide institutions with time to address any necessary staff training.

We also do not believe that it is unreasonable to require a graduate student who seeks to obtain a competitive preference for a fellowship to submit a FAFSA. The potential benefit to the graduate student outweighs the inconvenience of completing a FAFSA. Moreover, a student may be awarded a FLAS fellowship even if he or she did not submit a FAFSA, depending on the number of fellowships available to the institution and the characteristics of the other applicants. Nonetheless, we recognize that this may require the institution to educate its students about the requirement to submit a FAFSA in order to potentially receive preference under the priority.

Although this priority may add another layer to the fellowship selection process, we do not believe that the selection process will require significant changes, as an institution can obtain this financial information without an undue burden. Nonetheless, in response to commenters' concerns regarding administrative burden we have revised the priority language to allow an institution at the time of application to propose a preference for students who have financial need only for undergraduate students, only

for graduate students, or for both types of students. This allows an institution flexibility in deciding whether it is feasible to consider financial need for only its undergraduate students, its graduate students, or all students.

We also have revised the priority to allow an institution to start using the preference in the 2015-2016 academic year. We believe this extra time for implementation will allow institutions to create the required processes on their campuses to implement the priority.

Changes: We have made two revisions to the priority.

First, we have revised the priority to allow an institution to use a preference for students who have financial need only for undergraduate students, only for graduate students, or for both types of students. We also revised the priority to provide that an institution may meet the priority by committing to start using the preference in the 2015-2016 academic year, rather than in the first year of the grant as we originally proposed.

Timing of Competitions and Notifications

Comments: Three commenters expressed concern regarding the feasibility of implementing the FLAS selection process under this priority due to the timing of the release of

financial aid information. They noted that their selection committees typically meet in February and notify FLAS fellows who have been selected by March. These commenters believed that this timeframe was not achievable under the proposed priority because FAFSA data are not available until March or April. A commenter provided two reasons why FLAS awards need to be determined in March before the availability of FASFA data. First, the commenter said that summer FLAS fellows must be notified of the FLAS committee's decision by March so that they can apply to summer programs and submit their overseas program requests to the Department's IFLE staff. Second, the commenter noted that academic year awards for incoming students need to be determined by March so that the institution can recruit competitive students who must make graduate school decisions by April 15.

Two commenters remarked that the financial aid criteria will complicate the selection process but have little impact on the selection of FLAS fellows at the graduate level. A commenter noted that most graduate students are full-time students with limited sources of funding, and so they would likely qualify on the basis of financial need anyway. A commenter noted that the principal determinant of a graduate student's financial

need would be the student's marital status and presence or absence of dependents, and the commenter suggested that these factors are not appropriate selection criteria for making FLAS award decisions.

Discussion: We do not agree that the requirements of the priority will impede institutions in making awards by their usual deadlines. Students may submit FAFSAs to the Department beginning January 1, including through FAFSA on the Web. The Department processes records every weekday, except Federal holidays, and institutions generally receive the results of a FAFSA within one to two days after the student submits the FAFSA. If the institution wants students to apply for FLAS grants by February, it can instruct applicants who want to be considered for a preference based on financial need that they must submit the FAFSA before the selection committee meets in February.

Based on the previously described revisions to the priority language, institutions have the option to apply the priority to undergraduates only. Nonetheless, while it is possible that a preference for graduate students demonstrating financial need may consequently benefit students with spouses or children, we believe that assisting those students with financial need before

awarding fellowships to students who have not demonstrated need is the most responsible use of scarce resources.

Changes: None.

Student Financial Aid Packages

Comments: Three commenters suggested that the financial aid criterion will negatively affect the students whom the priority intends to assist. One commenter said that students with financial need who may be eligible to receive scholarships other than FLAS awards would appear to have low unmet need on account of scholarships the students may later turn down, and so they would be disadvantaged in the FLAS selection process. Another commenter noted that some academic departments provide more generous fellowship and teacher assistant stipends than others. Students from these departments would be categorized as less needy and therefore less competitive for FLAS awards, and the departments would be penalized for their financial aid policies.

Discussion: Our intent through this priority is to provide FLAS fellowships to students with financial need. To avoid penalizing needy students who may have received other scholarship offers, we have revised the priority language to indicate that a student's need should be determined based on the student's EFC, which reflects the student's

financial circumstances before other aid, such as scholarships, is considered.

Changes: We revised the priority to add language indicating that a student's need is to be calculated using the student's EFC, which reflects the student's financial circumstances before other aid, such as scholarships, is taken into account.

FLAS Student Eligibility

Comment: One commenter suggested that FLAS awards be made available to students from other colleges and universities regardless of whether a student is enrolled in an institution with an allocation of FLAS fellowships.

Discussion: Under §657.3 (b)(1) of the FLAS Program regulations, a student is eligible to receive a fellowship if the student is enrolled in an institution receiving an allocation of fellowships. The Department does not have the authority to revise the priority absent a change to the regulations.

Changes: None.

FINAL PRIORITY:

Priority: Applications that propose to give preference when awarding fellowships to undergraduate students, graduate students, or both, to students who demonstrate financial need as indicated by the students'

expected family contribution, as determined under part F of title IV of the Higher Education Act of 1965, as amended. This need determination will be based on the students' financial circumstances and not on other aid. The applicant must describe how it will ensure that all fellows who receive such preference show potential for high academic achievement based on such indices as grade point average, class ranking, or similar measures that the institution may determine. For grants awarded with fiscal year 2014 funds, the preference applies to fellowships awarded for study during academic years 2015-16, 2016-17, and 2017-18.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the Federal Register. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on

the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the Federal Register.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this proposed regulatory action is "significant" and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive

Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may--

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an "economically significant" rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in

Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency--

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account--among other things and to the extent practicable--the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives--such as user fees or marketable permits--to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency "to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible." The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include "identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes."

We are issuing this final priority only on a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as

necessary for administering the Department's programs and activities.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under FOR FURTHER INFORMATION CONTACT.

Electronic Access to This Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: www.gpo.gov/fdsys. At this site you can view this document, as well as all other documents of this Department published in the Federal Register, in text or Adobe

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You may also access documents of the Department published in the Federal Register by using the article search feature at: www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: May 27, 2014

Lynn B. Mahaffie,
Senior Director, Policy Coordination,
Development, and Accreditation Service,
delegated the authority to perform the
functions and duties of the Assistant
Secretary for Postsecondary Education.

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